INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	7

CITATIONS

Cases:	
Carlock v. *United States*, 53 F. 2d 926	5
Mayor & C. C. of Balto. v. *Gamse*, 132 Md. 290	5
Silberman v. *United States*, 131 F. 2d 715	5
United States v. *General Motors Corp.*, 323 U. S. 373	6
United States v. *Petty Motor Co.*, 327 U. S. 372	5
Miscellaneous:	
Orgel, *Valuation under Eminent Domain* (1936) sec. 124	5

719130—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 570

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The district court wrote no opinion. Its charge to the jury appears in the record at pages 21–24. The opinion of the Circuit Court of Appeals (R. 42–43) is reported in 155 F. 2d 977.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 12, 1946 (R. 44), and on July 5, 1946, a petition for rehearing was denied (R. 44). The petition for a writ of certiorari was filed on October 4, 1946. The jurisdiction

of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a tenant occupying a portion of premises condemned can recover the full rental value of his premises without deducting the rent reserved in the lease, in the absence of a showing that after the condemnation the tenant continued under an obligation to pay rent to his lessor.

STATEMENT

On April 28, 1942, the United States instituted proceedings to condemn 60,000 square feet of floor space in the Massachusetts Mutual Life Insurance Building in Springfield, Massachusetts, for a term of years beginning April 28, 1942, and expiring June 30, 1943, to provide office facilities for the Army Ordnance Department and for related military purposes (R. 1–8). On the same day the United States gave notice of intention to take immediate possession pursuant to an order of court authorizing it to do so (R. 11–12).

The John Hancock Mutual Life Insurance Company [1] occupied rooms 905–908 under a five-year lease beginning April 1, 1941, and expiring March 31, 1946, at a total rental of $6,060 to be paid at a monthly rate of $92.50 for the first

[1] Hereinafter referred to as John Hancock.

year, $97.50 for the second year, and $105 for the last three years (R. 14, 24–31). It also occupied rooms 422–423 of the building under a lease for a three-year term beginning November 1, 1941, and expiring October 31, 1944, at a total rental of $1,260 to be paid at the rate of $35 per month (R. 17–18, 32–38). A settlement having been made with the owner of the building by means of a lease of the building to the United States, a jury trial was had on June 4, 1945, to determine the compensation due the tenants (R. 18, 20). John Hancock introduced evidence that rooms 905–908 which contained 688 square feet had a fair rental value of $1.80 per square foot per year and that rooms 422–423 which contained 257 square feet had a fair rental value of $1.65 per square foot per year (R. 20–21). The Government's testimony as to fair annual rental value was $1.76 per square foot for rooms 905–908, and $1.63 per square foot for rooms 422–423, the same as the rent being paid under the leases (R. 20–21, 23). The trial court in charging the jury as to the measure of the tenant's compensation gave the following instructions (R. 23–24):

> * * * If the rent John Hancock was paying on the day it moved is in your judgment a fair market rental of those premises, then John Hancock can recover nothing in this action, because counsel has argued to you and witnesses have said that in computing the fair market value

> as of that date, they have taken into consideration the removal expenses and other things that go with it.[2]

At the close of the charge, counsel for John Hancock made the following objection (R. 24):

> I object to that part of the charge that instructs the jury that the respondent may recover only in the event that the jury find the rental value in excess of the lease value, and I request the Judge to charge that the respondent is entitled to recover the rental value of the premises for the period taken.

The trial court overruled the objection and denied the requested instruction, stating (R. 24) that "The request for instructions comes too late, as having come after the charge." The jury returned its verdict on June 4, 1945, assessing damages in the sum of "None" (R. 18). Judgment was entered on the verdict on October 15, 1945 (R. 19).

The Circuit Court of Appeals for the First Circuit affirmed, holding that the burden rested upon petitioner to prove that after condemnation it was under a continuing obligation to pay rent

[2] In addition to opinion testimony as to fair rental value, which, as the court pointed out, included a consideration of moving costs, there was testimony on behalf of John Hancock that it had cost $35 to move out of the premises and would cost $35 to move back in (R. 23). The court had previously instructed the jury that they should consider the moving costs in fixing the value of the leasehold interest.

and that such proof had not been made (R. 43–44).

ARGUMENT

A leasehold is valuable only if the market rental value of the space involved exceeds the rent payable under the lease. Hence compensation payable upon condemnation of leased premises is measured by such excess, if any.[3] Since the jury has found that there was no such excess, i. e., that the rent payable in the lease equaled the amount the space would rent for on the market, petitioner has not been deprived of anything of value for which it is entitled to be compensated. Its argument relates, therefore, not to the substantive issue of compensation but merely to the procedure by which the award is paid to the lessor.

In the usual condemnation proceeding where both the landlord and tenant are joined as parties, the award for the entire property is paid into court, the tenant's share therein, if any, is deducted and the remainder is paid to the landlord. When a settlement is made with the landlord, the tenant's rights are not increased. *United States* v. *Petty Motor Co.*, 327 U. S. 372, 376. If, however, the landlord, rather than participating in the condemnation proceedings, con-

[3] See *United States* v. *Petty Motor Co.*, 327 U. S. 372; *Carlock* v. *United States*, 53 F. 2d 926, 927–928 (App. D. C.); *Mayor & C. C. of Balto.* v. *Gamse*, 132 Md. 290, 297–298; *Silberman* v. *United States*, 131 F. 2d 715, 718 (C. C. A. 1); Orgel, *Valuation under Eminent Domain* (1936), sec. 124.

tinues to receive the rent reserved in the lease, the entire award is paid to the tenant. Such was the situation in *United States* v. *General Motors Corp.*, 323 U. S. 373.

Petitioner's contention, therefore, rests upon the assumption that the landlord has not participated in these proceedings and that petitioner is bound to continue to pay the rent reserved in the lease. On the contrary, the owner, the Massachusetts Mutual Life Insurance Company, was made a party to this proceeding (R. 3, 7) and, while it does not appear from the record, petitioner does not deny the fact that a settlement by means of a voluntary lease has been made with the owner (Br. 13). Petitioner made no attempt to show that it had paid rent to the owner or that any demand had been made therefor. The mere existence of petitioner's lease does not, as it contends (Br. 12), indicate that the landlord was not compensated in the condemnation proceeding and was insisting, instead, upon payment of the lease rental. Obviously, the owner could not demand rent of petitioner while receiving rent for the same premises from the United States.

The only justification for an award to petitioner against the Government rests on the theory that petitioner is obligated to pay that amount to the lessor. But the lessor is receiving rent from the United States, hence the amount of the

award should be credited to the Government. The procedure advocated by petitioner would not, therefore, accomplish any useful purpose.

CONCLUSION

The decision of the court below is correct and there is neither a conflict of decisions nor any question of general importance. It is respectfully submitted that the petition should be denied.

J. HOWARD MCGRATH,
Solicitor General.
DAVID L. BAZELON,
Assistant Attorney General.
ROGER P. MARQUIS,
WILMA C. MARTIN,
Attorneys.

OCTOBER 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946